IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).No.2194 of 2006

Commissioner of Income Tax
Madurai. .. Appellant/Appellant

Vs.

M/s.Nellai Trading Automobile
Agency,
177A, 21-A Trivandrum Road,
Tirunelveli-2. .. Respondent/Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 27.1.2006 in ITA No.182/Mds/2004 for the assessment year 1996-98.

For Appellant : Mr.J.Narayanaswamy,
Standing Counsel for I.T.Dept.

J U D G M E N T

(Delivered by P.P.S.JANARTHANA RAJA, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in ITA No.182/Mds/2004 dated 27.01.2006, raising the following substantial question of law.

"1. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the penalty under Section 271(1)(c) when the assessee has undisputedly concealed the particulars of his income and furnished inaccurate particulars of such income?
2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the explanation that the stock received in March were not included in their inventory as they remained unpacked is sufficient to avoid penal action u/s 271(1)(c)?

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2.1. The revenue is the appellant. The relevant assessment year is 1996-97 and the corresponding year ended on 31.3.1996. The assessee is a firm engaged in the business of dealership in motor cycles, mopedes and spares of TVS Suzuki Ltd. The assessee filed its return of income admitting total income as Rs.6,19,370/-. During the course of scrutiny, the Assessing Officer found that purchase of spares from M/s.T.V.S.Suzuki Ltd. to the extent of Rs.1,63,967/- was not admitted either under sales or in the closing stock even though purchases were entered in the purchase ledger. The assessee agreed to the addition and the assessment was accordingly completed by adding the above amount towards closing stock.

2.2. Later, the Assessing Officer found that there were certain discrepancies in the quantitative particulars of stock in the invoices totalling Rs.1,63,966.79 and also the same were not accounted for under sales or in the closing stock as on the last day of the accounting year. The Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Income Tax Act (hereinafter referred to as 'the Act') and also issued notice under Section 274 of the Act. On receipt of show cause notice, the assessee has offered the following explanation:

> "1. Certain items of stock which were not loaded in the racks, were omitted to the included in the stock inventory. Some items, which were received during the month of March, remained unpacked and the Manager, who was in charge of taking stock inventory, did not include these items in the inventory.
>
> 2. The Manager was entrusted with the work of taking stock inventory, due to the preoccupation of the partners in connection with the construction of a building by a sister concern of the assessee-firm. The partners also did not choose to verify the correctness of the stock inventory, as the net profit margin was higher."

2.3. After considering the above explanation, the Assessing Officer by order dated 23.08.1999 levied a penalty of Rs.1,00,000/-. On appeal at the instance of the assessee, the Commissioner of Income-tax (Appeals) by order dated 22.10.2003, allowed the appeal holding that it was not a fit case for levy of penalty and therefore penalty of Rs.1,00,000/- imposed by the Assessing Officer was cancelled. Aggrieved against the order of the first appellate authority, the Revenue preferred an appeal before the Income Tax Appellate Tribunal. By order dated 27.01.2006, the Income Tax Appellate Tribunal dismissed the appeal preferred by the revenue and confirmed the order of the first appellate authority. Hence the present appeal by revenue.

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3. The learned counsel appearing for the Revenue submits that the Tribunal had failed to see that omission to admit the correct stock is deliberate and the penalty under Section 271(1)(c) of the Act is correctly levied by the lower authority after proper scrutiny.

4. It was submitted before the first appellate authority that the batch of spares received from the principal M/s. TVS Suzuki Limited amounting to Rs.1,63,966/- were not included in the inventory by mistake as they were lying in packed condition and as the partners were busy with the construction of a show room of their sister concern, the Manager of the firm was asked to take stock of the inventory, who committed the mistake of taking only the stock which were loaded on the racks ignoring the packed items. The omission was not detected even by the Chartered Accountant because the income was much higher than the last year's income even without including the above stock and as such it escaped the attention of the Chartered Accountant. It was further submitted that it was a bona fide mistake without any intention to conceal or suppress the taxable income and in any case this should be allowed as a deduction in the subsequent year and also the goods in question were received at the fag end of the year as seen from the invoices. That apart, the explanation of the assessee that the omission occurred due to the mistake of the Manager in not including the packed items has not been found to be false by the Assessing Officer. The explanation offered by the assessee seems to be plausible one. After hearing both the parties, the first appellate authority as well as the second appellate authority found that the explanation offered by the assessee was reasonable one. The tribunal based on the materials and the evidence available on record, came to the conclusion that there was no intention to conceal the income and that it was a genuine mistake because there is no falsehood in the explanation offered by the assessee.

5. The above findings of the Tribunal are well founded. We do not find any infirmity or illegality in the order of the Tribunal.

6. Our above view is supported by the decision in CIT vs. Best Supply Agency (241 ITR 208), whereunder it is held that the mistake committed by the person who maintained the register cannot be attributed against the assessee and therefore penalty proceedings under Section 271 (1)(c) of the Act cannot be initiated as there is no concealment. Again in CIT vs. Susai Kalyanamandapam Pvt. Ltd. (271 ITR 138), it is held that there is no legal fiction regarding the existence of mens rea under Explanation 1 to Section 271(1) of the Income Tax Act.

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7. Of course, Mr.J.Narayanaswamy, learned counsel appearing for the revenue invited our attention to the decision of this Court in Sree Nithyakalyani Textiles Ltd. vs. Deputy Commissioner of Income-Tax (282 ITR 154). But, in the said case, the authorities concurrently found that there was a deliberate undervaluation of stock, whereas in the instant case, both the first appellate authority as well as the second appellate authority found that there was no intention to conceal the income.

8. Finding no substantial question of law arises for our consideration, the appeal is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. THE ASST REGISTRAR
INCOME TAX APPELLATE TIRBUNAL 'C' BENCH MADRAS

2. THE COMMISSIONER OF INCOME TAX
MADURAI

3. THE COMMISSIONER OF INCOME TAX APPEALS II
MADURAI

4. THE DEPUTY COMMISSIONER
OF INCOME TAX CIRCLE I
TIRUNELVELI

ATR

HPR(CO)
SR/6.10.2006

T.C.(A).No.2194 of 2006

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